IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23700 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UMABEN I RAVAL
Versus
CENTRAL GOVERNMENT

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Appearance :
Mr Mahendra K Patel for the petitioner

Mrs Suman Khare for Respondent No.1
Ms Falguni Patel, Assistant Government Pleader for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 23/08/2007

ORAL JUDGMENT

Rule. Ms Suman Khare waives service of Rule for respondent No.1. Ms Falguni Patel, Assistant Government Pleader waives service of notice of Rule for respondent No.2. At the request of the learned advocates for the parties, the matter is taken up for final hearing today.

The petitioner is constrained to file this petition since her longstanding request to permit her to avail the benefit of Freedom Fighter Pension Scheme has not been responded to positively by the respondent. The petitioner is an unfortunate lady who has been deprived of her legitimate right to have pension under the Freedom Fighters Pension Scheme floated by the Government of India. She is aged about 85 years now. It is her say that in or around the year 1942 she had been actively participating in the freedom movement and in the course of the same, she had to go underground to evade the arrest. In support of her say, she has produced the relevant certificates issued by the persons with whom she had taken part in the freedom movement. These certificates are forming part of the record of this petition. It is her say that in view of the aforesaid fact, she has been trying to avail the benefit extended to the freedom fighters by the Union Government by way of the aforesaid scheme, but has failed as no heed has been paid to her request. It is her say that her claim to receive pension is denied on technical grounds.

I have heard Mr Mahendra Patel for the petitioner and Ms Suman Khare for respondent No.1 and Ms Falguni Patel, Assistant Government Pleader for respondent No.2. I have also carefully perused the record of this petition. The respondents have contested this petition by filing the counter affidavits. It is the say of respondent No.1 that the petitioner did not fulfill the requisite criteria for entitling her to receive the pension nor

did she comply with the necessary formalities to enable the respondents to ascertain the genuineness of her claim. It is submitted by Mr Patel that despite complying with all the necessary formalities the claim of the petitioner is not being considered on one pretext or the other by respondent No.1. It is the submission of the petitioner that the petitioner had actively participated in the Freedom Movement which is evident from the certificates produced by her in this petition and also certain other documentary evidence including the photographs. It is his submission that when it is adequately proved by the petitioner that she was taking part in the freedom movement and to save herself from the arrest she had to remain underground for considerable time she becomes entitled to receive pension and her claim was completely ignored by the respondents.

As against that, Ms Suman Khare has submitted that the petitioner has not specifically stated the period for which she remained underground. It is her submission that the certificates have been issued by the persons who themselves were in custody during that period and they could not have certified with regard to participation of the petitioner in the freedom movement. She has also submitted that the petitioner had not produced the non-availability certificate of this evidence before the concerned authority and therefore she is not entitled to receive the pension. According to her, petition deserves to be dismissed.

Having carefully considered the rival submissions and having perused the record of this petition, it clearly appears that the petitioner who is now 85 years has been trying hard to receive the pension under the Freedom Fighters Pension Scheme. The record also shows that

during the year 1942 and around that time she had been actively participating in the freedom movement. One Ramjibhai Maljibhai Desai has issued the Certificate dated 14.11.1985 wherein it has been stated that the petitioner in the year 1942 had worked as freedom fighter in Dehgam, Mehsana and Ahmedabad. He has further stated that she was staying in the same area where he stayed. He has also stated that her elder brother, Maganlal Dave was also taking part in the freedom movement and he was arrested. However, the petitioner had gone underground to evade the arrest. Similar certificate has been given by one Shri Ghanshyam H Dave, Convenor of the Freedom Fighters Committee, Ahmedabad dated 19th June 1985. He has stated that in the year 1942 the petitioner was aged about 18 years and she was actively connected with the freedom movement. She moved from door to door to meet the ladies of the house and to encourage them and their husbands to join the freedom movement. He has stated that she participated in the Prabhat Pheris and also inspired ladies to join the Satyagrah and while doing so faced the police atrocities. He has further stated that in Dehgam and Ahmedabad she had worked underground and brought awareness in the people by distributing Congress pamphlets. Similar certificate has been given by one Maganlal Harishankar Dave, who is the elder brother of the petitioner. There is also a certificate of Shri B.D. Acharya, a copy of which is produced at Annexure-A to the petition. In the said certificate Shri Acharya has stated on the same lines. His certificate shows that he had remained in prison during the British regime in connection with the freedom movement from December 1942 to October 1945 i.e. almost for three years. This certificate adequately supports the claim of the petititioner that she was actively participating with the freedom fighters movement. Therefore, it is obvious that she had actively participated in the freedom movement.

It is further the submission of the respondents that to rely upon these certificates the deponent has to be a person who has himself or herself remained in prison at least for two years in connection with the freedom movement. So far as the certificate issued by Ramjibhai is concerned, it shows that he had remained in prison for nine months and seven days. So far as other persons who have given the certificates are concerned, their certificates do not mention whether they have suffered imprisonment for two years or more on account of their participation in the freedom movement. However, certificate of Ramjibhai shows that he had remained in prison for a period over two years. Further, there is other material on record which is referred to above which could give credence to the claim of the petitioner and these certificates can lend some support to such evidence. It is also clear that the petitioner vide her letter dated 21.5.2007 has already forwarded the NARC to the concerned authority. It is the certificate issued by the Collector, Mehsana dated 15.05.2007. When the record of the petition clearly shows that the petitioner had gone underground while taking part in the freedom movement and that has been adequately established by record of this petition which also includes personal knowledge certificates, there is no need to doubt the claim of the petitioner.

Mr Patel has placed reliance on the judgment in the case of Government of India V. Jainalbhai Jayantilal Thakore dated 21st August 2006 in Letters Patent Appeal No.1008 of 2006 with Civil Application No.9364 of 2006. In almost identical facts, the Division Bench while confirming the decision of the learned Single Judge has dismissed the appeal of the Government of India and has upheld the decision of the learned Single Judge whereby the respondent of that appeal was allowed the pension under the aforesaid scheme. The Division Bench placed

reliance on the decision of the Apex Court rendered in Gurdial Singh v. Union of India, JT 2001 (8) SC 165. The observations of the Apex Court quoted by the Division Bench are as under:-

> "As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the said Scheme. ..... Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence".

Thereafter, the Division Bench has held that in its view the respondent of that appeal was squarely covered by the judgment of the Apex Court. As stated above, the facts of this case are almost identical. The petitioner has furnished to the respondent her application giving full particulars about his participation in freedom struggle and its consequences, the personal knowledge certificates given by other participants. Thus, petitioner has produced sufficient material to probablise that she was a freedom fighter and what suffering she had undergone. In view of the aforesaid, I do not have any hesitation to hold that the petitioner also stands covered by the observations of the Apex Court made in the case of Gurdial Signh (supra) and therefore she is entitled to receive the benefit under the Central Government Pension Scheme. Hence, the respondent is directed to accept the claim of the petitioner and grant her pension under SSS Pension Scheme, 1980

forthwith. The petitioner is entitled to get pension under the Swatantra Sainik Samman Pension Scheme, 1980 with effect from the date of her application and the respondent is directed to calculate and pay the amount of arrears of pension under the Scheme within three months from the date of receipt of writ of the order. The petition is therefore allowed. Rule is made absolute.

(Akshay H Mehta, J.)

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